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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,345	04/12/2004	Tom Bogeskov-Jensen	ACU-9210	4741

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STALLMAN & POLLOCK LLP  
SUITE 2200  
353 SACRAMENTO STREET  
SAN FRANCISCO, CA 94111

EXAMINER

ENSEY, BRIAN

ART UNIT PAPER NUMBER

2646

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/823,345

Applicant(s)

BOGESKOV-JENSEN ET AL.

Examiner

Brian Ensey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claims 9-17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 9-17 identify a headset comprising a transceiver body (separate from the support body) containing a speaker and any other functional components used in the headset for operation of the speaker. Previously submitted claims identify only a support body having a speaker transducer or a speaker transducer and microphone transducer attached with a deformable clip.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee U.S. Patent No. 6,038,329.

Regarding claim 1, Lee discloses a headset (60) comprising: a support member (32) for attachment to an ear of a user, the support member including no functional components for the operation of the headset; a speaker transducer (30) that outputs sound in response to a sound signal; and a deformable clip (14,22) connected to the transducer and configured to permit

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attachment of the transducer to the support member (See Figs. 3 and col. 3, lines 36-49 and 61 to col. 4, line 3).

Regarding claim 3, Lee further said support member (32) is substantially planar (See Figs. 2 and 3).

Regarding claim 4, Lee further discloses said support member is formed from a flexible material (See col. 3, lines 36-49).

Claim 7 is rejected under 35 U.S.C. 102(e) as being anticipated by Morales U.S. Patent No. 6,374,090.

Regarding claim 7, Morales discloses a headset comprising: a substantially planar support member (52,82,84) for attachment to an ear of a user; and a body (8) including a speaker transducer (62) that outputs sound in response to a sound signal and a microphone (64) transducer that outputs a speech signal in response to sound, said body further including a deformable clip (50,52,56,72,74,76), said body being connected to the support member by said clip (See Fig. 4 and col. 3, line 46 to col. 4, line 9).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

Regarding claim 2, Lee further discloses said clip is formed with a U-shaped section located between a pair of opposed legs (See Fig 3). Lee does not expressly disclose the support member is clamped between said opposed legs. However, Lee teaches the support member attached to the clip to hold the transducer on the ear (See Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the clip as an attachment and support device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morales as applied to claim 7 above and in further view of Braund U.S. Patent No. 6,373,942.

Regarding claim 8, Morales discloses a flexible, curved, planar support member for mounting the headset to the ear of the user. Hahn does not expressly disclose said support member includes curved slot to allow the support member to be hung from the ear of the user. However, the use of curved slot support members are well known in the art and Braund teaches a support member includes curved slot to allow the support member to be hung from the ear of the user (See Fig. 3 and col. 44-56). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a curved slot for a comfortable secure attachment of the headset of Hahn to the ear of the user.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee applied to claim 1 above and in further view of Clegg et al. U.S. Patent No. 6,490,362.

Regarding claim 6, Lee discloses a headset as claimed. Lee does not expressly disclose a microphone transducer that outputs a speech signal in response to sound, said microphone transducer being connected to said clip. However, the use of microphones in headsets is well known in the art and Clegg teaches a microphone transducer (20) mounted in a boom that clips to support member (242) and a speaker transducer (216) attached to a support member with clip

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member 248 engaged with pin (236) (See Fig. 9 and col. 9, line 58 to col. 10, line 32). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a clip as an alternative means to attach the microphone transducer to the support member of Lee for two way communication.

### *Allowable Subject Matter*

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(571) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to: Customer Service Window, Randolph Building, 401 Dulany Street, Arlington, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKE  
October 21, 2005

  
**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**